



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Group Art Unit: 1784
Examiner: Hong T. Mehta

In Re PATENT APPLICATION OF

Applicant(s): Yutaka Harano

Appln. No. : 10/568,759

Conf. No. : 6656

Filed : February 21, 2006

For : TEST FOOD FOR DETECTING
LIFE STYLE-RELATED DISEASES
(As amended)

Atty. Dkt. : AI 402 NP

**DECLARATION
UNDER
37 C.F.R. §1.131**

MAIL STOP – AMENDMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I, Yutaka Harano, am the sole inventor of the above-captioned Application for U.S. Letters Patent. This Declaration Under 37 C.F.R. §1.131 is submitted to correct the record and to eliminate the Harano et al. Abstract titled "Evaluation of metabolic effectiveness of exercise habit using respiratory gas analysis and a newly developed cookie test" as a prior art reference against the claims in my above-identified Application.

To the best on my information and belief, the facts are as follows.

1. The Harano et al. Abstract information was submitted to the U.S. Patent and Trademark Office in an Information Disclosure Statement date stamped as received on December 7, 2007. The Harano et al. Abstract was initially cited in a Supplementary European Search Report that was mailed with an EPO Communication dated September 25, 2007, in connection with EP Patent Application No. 04772095.8 that corresponds to my above-captioned U.S. Application. The EPO Communication and the Supplemental European Search Report were accompanied by a copy of a one page Abstract that notably bore no date. The Supplementary European Search Report listed the Abstract as "DIABETLOGIA, vol. 46, no. Suppl. 2, 7 August 2003, page A260, XP002449478", and this information and a copy of the Abstract were

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presented in the Information Disclosure Statement submitted to the U.S. Patent and Trademark Office.

2. Upon reconsideration, however, I believe that the Abstract of my presentation made at the 18th International Diabetes Federation on August 7, 2003, was not available online or otherwise published until a time after my August 21, 2003, Japanese priority date.

3. My domestic patent representative in Japan and I have searched for evidence of the actual online publication date of the one page Abstract and believe it occurred on February 19, 2004 for reasons described in the following.

4. In order to determine the publication date of the "A260, XP002449478 * abstract **", we requested that the EPO Examiner provide the second page on which the alleged publication date of August 7, 2003, appears. The EPO Examiner supplied us with a one page print out of a list of five articles (SpringerLink – Journal Issue), see ATTACHMENT 1. This one page list shows a SpringerLink date of August 7, 2003, but does not disclose the content of any Abstract. The one page list merely lists, for example, "Abstracts of the IDF Congress in Paris 2003."

5. I attempted to obtain the content of the Harano et al. Abstract online by going to this page and clicking on "Abstracts of the IDF Congress in Paris 2003". I obtained and printed out a one page document, see ATTACHMENT 2. It is noteworthy that the SpringerLink date of this information is shown as February 19, 2004.

6. It therefore appeared to me that the only information available online on August 7, 2003, was a list of the titles of five articles, not Abstracts of the articles themselves. It appeared to me that the Abstracts themselves, including my own Harano et al. Abstract, were not available online until February 19, 2004.


7. In order to confirm the actual online publication date of the Abstract, we sent an inquiry to the European Association for the Study of Diabetes (EASD), the host organization of the International Diabetes Federation (IDF Congress in Paris 2003). A reply was received from Dr. Viktor Jorgens, Executive Director of EASD, see ATTACHMENT 3. Dr. Jorgens confirmed that the Abstracts from the 18th International Diabetes Federation Congress, 2003, were made available online through SpringerLink on February 19, 2004.

8. In view of these facts, I now believe that the Harano et al. Abstract was first published on February 19, 2004, not August 7, 2003, and I wish to correct the record in this regard. Moreover, since the Harano et al. Abstract was not available until after the August 21, 2003, Japanese priority date of my above-captioned Application, I believe that the Harano et al. Abstract should be removed as a prior art reference against the claims in my above-captioned Application.

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I hereby state that all statement made by me based on my own knowledge are true and that all statements made by me on information and belief are believed to be true. I acknowledge that willful false statements and the like are punishable by fine or Imprisonment, or both (18 U.S.C. 1001; M.P.E.P. 715.04) and may jeopardize the validity of my above-captioned Application or any Patent issuing thereon.

Executed this 24 day of September, 2010


Yutaka HARANO, Sole Inventor



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Volume 46, Supplement 2 / August, 2003

Journal

Diabetologia

Publisher

Springer Berlin / Heidelberg

ISSN

0012-186X (Print) 1432-0428 (Online)

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SpringerLink Date

Thursday, August 07, 2003

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PDF (68.4 KB)

A1-A2

Abstracts of the IDF Congress in Paris 2003

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A3-A446

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A447-A469

Organisation Section

PDF (40.3 KB)

A470

Minutes of the 38th General Assembly of the European Association for the Study of Diabetes

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L1-L8

ATTACHMENT 1



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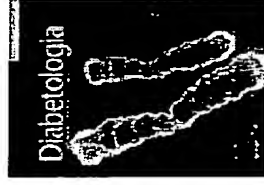
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**Abstracts of the IDF Congress in Paris 2003**

Journal Diabetologia
 Publisher Springer Berlin / Heidelberg
 ISSN 0012-186X (Print) 1432-0428 (Online)
 Issue Volume 46, Supplement 2 / August, 2003
 Category Abstract-Book 2003
 DOI 10.1007/s00125-003-1190-9
 Pages A3-A446
 Subject Collection Medicine
 SpringerLink Date Thursday, February 19, 2004

PDF (3.8 MB)

Abstract

Without abstract.

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1. Meas, T. (2010)
Independent effects of weight gain and fetal programming on metabolic complications in adults born small for gestational age.
Diabetologia

ATTACHMENT 2

ATTACHMENT 3

EASD

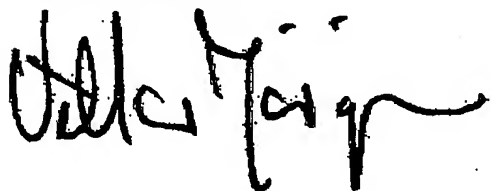
European Association for the Study of Diabetes

To whom it may concern,

Herewith I confirm that the abstracts from the 18th International Diabetes Federation Congress, 2003, were made available online, through Springerlink, on February 19, 2004 as is clearly shown on the abstract volume website:

<http://www.springerlink.com/content/pvklug01hp150t08/?p=4fabcb505fea4f50967824f3c8264157&pi=0>

Yours sincerely,



Dr. Viktor Jörgens
Executive Director

~~Dr. Viktor Jörgens is Executive director of the European Association for the Study of Diabetes (EASD) and the European Foundation for the Study of Diabetes (EFSD).~~

Diabetologia is the official journal of the European Association for the Study of Diabetes and is published by Springer©

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